



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,575	02/15/2001	Tim Cantrell	23101.0003U1	1832
23859	7590	12/22/2005	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			WILSON, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/784,575	Applicant(s) CANTRELL ET AL.	
	Examiner Michael C. Wilson	Art Unit 1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 November 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 59-65.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

MICHAEL WILSON
PRIMARY EXAMINER



Continuation of 3. NOTE: The phrase "a native embryo, wherein the native embryo" remains indefinite for reasons of record and should be deleted.

Continuation of 11. does NOT place the application in condition for allowance because: The limitation of an "embryo that develops and hatches in the same shell in which the female pronucleus was formed" would require new considerations as it relates to the Johnston abstract of record not previously required. Applicants do not clearly address how the limitation overcomes the teachings in the Johnston abstract. See attached pages for a discussion of the proposed amendment.

The proposed amendment will not be entered because it still uses the phrase "native embryo" which is indefinite for reasons of record. Deletion of the phrase "a native embryo, wherein the native embryo is" would overcome this rejection.

The proposed amendment would overcome the 102 over Tanaka and the 102 over Naito.

Applicants' arguments regarding Johnston have been considered.

Applicants argue the embryo taught by Johnston was not in a shell. Applicants' argument is not persuasive. The embryo was in a shell and then removed. This is acknowledged by applicants on pg 7, last two sentences, of applicants' response filed 11-17-05.

Applicants argue Johnston did not put the embryo back into a shell. Applicants' argument is moot because the product claimed does not require putting an embryo back into a shell.

Applicants argue Johnston did not add thin/thick albumin into the shell. Applicants' argument is moot because the claims do not require such structural features and because the original embryo in the shell had albumin.

Applicants' argue the Examiner's assertion that the embryo of Johnston "can develop into a chick" is not supported. Applicants argue the goal of Johnston was not to hatch chicks. Applicants argue pg 39-43 and Table 3 of the thesis by Johnston show

Art Unit: 1632

that Johnston was "only able to create very early embryos that cease to proliferate."

Applicants' arguments are not persuasive. Applicants have not provided any evidence that the embryo of Johnston cannot develop into a chick. While the goal of Johnston may not have been to hatch a chick, the embryo could have been hatched as a live chick, which is all that is required in the claims. Regarding pg 39-43 and Table 3 of the Johnston thesis, first it cannot be determined that the Johnston thesis is representative of the abstract by Johnston relied upon for the rejection. Second, the abstract by Johnston clearly states in the last sentence that the fertilized oocyte proliferates. Third, pg 39-43 and Table 3 of the Johnston thesis merely assess the fertility of fertilized oviposited ova and do not disclose the embryos cease to proliferate. Applicants' arguments do not address how the proposed limitation of "an embryo that develops and hatches in the same shell in which the female pronucleus was formed" overcomes the teachings of Johnston. The proposed limitation would require a new discussion as it relates to the 102 rejection over the Johnston abstract; therefore, the proposed amendment will not be entered.



MICHAEL WILSON
PRIMARY EXAMINER